77-1834

IN THE

Supreme Court of the United States

October Term, 1978

JOHN H. LANG, *Appellant*
v.
CITY OF PHILADELPHIA
and
CHARLES E. DORFMAN
and
NICHOLAS D'ALESSANDRO
and
DAVID A. KRAFTSOW
and
ANDREW G. FREEMAN
and
KENNETH L. MOORE
and
STANLEY J. BERNSTEIN

JURISDICTIONAL STATEMENT ON APPEAL FROM THE COMMONWEALTH COURT OF PENNSYLVANIA

KENNETH E. AARON,
Counsel for Appellant

935 Lafayette Building
Philadelphia, Pennsylvania 19106
(215) 629-1100

THE LEGAL INTELLIGENCER, 66 NORTH JUNIPER STREET, PHILA., PA. 19107 (215) 561-4050

TABLE OF CONTENTS

TABLE OF CITATIONS

IN THE

Supreme Court of the United States

October Term, 1978

JOHN H. LANG, *Appellant*

v.

CITY OF PHILADELPHIA
and
CHARLES E. DORFMAN
and
NICHOLAS D'ALESSANDRO
and
DAVID A. KRAFTSOW
and
ANDREW G. FREEMAN
and
KENNETH L. MOORE
and
STANLEY J. BERNSTEIN

JURISDICTIONAL STATEMENT ON APPEAL FROM THE COMMONWEALTH COURT OF PENNSYLVANIA

OPINION BELOW

The opinion of the Commonwealth Court from which the present appeal is taken is officially reported at 31 Cmwlth. Ct. 537, and unofficially reported at 377 A.2d 849. A copy of this opinion is attached hereto as Appendix "A" (A. 1). The opinion of the Common Pleas Court of Philadelphia County is unreported and is attached hereto as Appendix "B" (A. 6). The Supreme Court of Pennsylvania did not file an opinion with its order denying the Petition for Allowance of Appeal.

STATEMENT OF JURISDICTION

1. This suit was brought by the Appellant as an action in equity for a preliminary and permanent injunction in the Court of Common Pleas of Philadelphia County. Prior to the hearing on the preliminary injunction, the Appellees filed extensive Preliminary Objections with the lower court, including an objection in the Nature of a Demurrer for failure to state a cause of action. On April 13, 1976, an order was entered by the Honorable James R. Cavanaugh dismissing the Appellant's Complaint in Equity with prejudice. The Appellant appealed to the Commonwealth Court of Pennsylvania. On September 12, 1977, the Commonwealth Court entered the order (which is the order to be reviewed), which order affirms the lower court's order. The Appellant filed a timely Petition for Allowance of Appeal with the Supreme Court of Pennsylvania, but the Petition was denied by order entered on March 29, 1978, a copy of which is attached hereto as Appendix "C" (A. 17). The Appellant filed a Notice of Appeal to this Honorable Court in the Commonwealth Court on June 15, 1978, a copy of which has been attached hereto as Appendix "D" (A.18).

2. The jurisdiction of the Supreme Court of the United States to review this decision by direct appeal is conferred by Title 28, U.S.C. §1257(2). The decree in the present case under Pennsylvania law is final. The following decisions sustained the jurisdiction of the Supreme Court of the United States to review the final decree on direct appeal in this case:

Interstate Circuit, Inc. v. City of Dallas, 390 U.S. 676 (1968);

Hanson v. Denckla, 357 U.S. 235 (1958);

Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157 (1954);

John P. King Mfg. Co. v. City Council of Augusta, 277 U.S. 100 (1928).

This case drew into question the validity of The Philadelphia Code, §19-1501(8), and §19-1502(1), and involves The Buck Act, Title 4 U.S.C. §106. These two statutory provisions involved are lengthy and are attached hereto as Appendices "E" and "F", respectively (A. 19 and A. 22).

In the event that this Honorable Court does not consider an appeal to be the proper and appropriate procedure for review, the Appellant requests that the papers and proceedings herein be regarded and acted upon as a Petition for Certiorari under Title 28 U.S.C. §2103.

QUESTIONS PRESENTED BY APPEAL

1. A federal enclave is located on the exterior boundary of both a city and of the state where the city is located. A civilian employee works upon this enclave. He is a non-resident of the state. Other than travelling from his home state through the city to the federal enclave, he has no contact with nor receives any benefit or protection from the state or the city. The city under a state statute, imposes a percentage tax upon his wages earned as a result of his employment upon the federal enclave. Does the city's taxation of his wages violate the United States Constitution in the following manners:

(a) By legislating within the exclusive jurisdiction enclave of the United States Government in violation of article I, section 8, clause 17;

(b) By taking of his property without providing any benefits and protection or without his consent contrary to the due process clause of the fourteenth amendment; and

(c) By imposing a tax on the right of a resident of another state to travel to a federal enclave located in the city?

2. A tax ordinance imposes a tax upon the earnings of residents and non-residents and excludes from taxation the earnings of members of the United States Armed Forces. This exclusion applies even if the recipient is a resident of the taxing authority. Is this exclusion from taxation of the wages of members of the United States Armed Forces an invidious discrimination violative of the equal protection clause of the fourteenth amendment of the United States Constitution?

STATEMENT OF THE CASE

In June of 1975, JOHN H. LANG (hereinafter referred to as LANG) the Appellant herein, received a Notice of Assessment from the City of Philadelphia (hereinafter referred to as CITY) setting forth an assessment for the City's Wage Tax for the year 1974. As a New Jersey resident and a federal employee working at the Philadelphia Naval Base[1], Lang, prior to the fourth quarter of 1974, had always paid the Tax and filed the appropriate returns; however, in the fourth quarter of 1974, Lang filed a return but refused to make a payment of taxes since he received no benefit or protection from the City nor had consented to this taxation by vote. After receiving the Notice of Assessment, Lang filed a timely Petition for Review with the City's administrative review board.

Realizing that this board had no power or jurisdiction to determine Constitutional challenges to the City's Tax, Lang thereafter filed an equity action in the Court of Common Pleas seeking a preliminary injunction to restrain the board from holding a hearing on his Petition; and furthermore, requested the court to determine his Constitutional challenges to the City's Wage Tax.

In this Complaint in Equity, Lang raised the question of the validity of the City's Tax on the grounds of its repugnancy to the United States Constitution. In particular, he contended that the imposition of this tax upon him as a non-resident of the Commonwealth and as a civil employee working on a federal enclave was

---

1. This land was purchased by the United States with the consent of the Commonwealth of Pennsylvania and cession was authorized by the United States Congress. A Certificate of Acceptance was recorded in the Office of the Recorder of Deeds in Philadelphia County dated December 23, 1868, in Volume 19 (J.P.O. 2) Misc. Land Records p. 208. This cession was only with the reservation for the purpose of allowing service of process of the Commonwealth of Pennsylvania.

violative of article I, section 8, clause 17 of the United States Constitution, the due process clause of the fourteenth amendment, and the right to travel as guaranteed in the United States Constitution. Furthermore, he claimed that the Tax violated the equal protection clause of the fourteenth amendment of the United States Constitution by excluding wages of members of the United States Armed Forces from taxation even where the member was a resident of the City.

Prior to the preliminary injunction hearing, the Appellees filed numerous Preliminary Objections, including the claim that Lang had failed to state a cause of action. After oral argument on the Preliminary Objections, the judge of the court below filed an opinion and order on April 13, 1976, dismissing Lang's Complaint, with prejudice, for failure to state a cause of action. In this opinion and order, the judge of the court below, the Honorable James R. Cavanaugh, passed upon many of Lang's Constitutional questions in a summary manner, as follows:

> "The plaintiff 's challenges to the tax as violative of Article I, section 8, clause 17 of the United States Constitution, the Equal Protection Clause of the Fourteenth Amendment, and Article VIII, section I of the Pennsylvania Constitution have been largely determined in former cases and may be disposed of summarily." (Appx. B at A. 6).

As to Lang's argument that the exclusion from taxation of the earnings of members of the United States Armed Forces was a violation of equal protection, the court below stated:

> "This classification was found 'entirely reasonable' in *Philadelphia v. Farrell*, 35 D.&C.2d 177 (1964), aff 'd.205 Pa. Super. 263 (1965), and see no reason to disturb that judgment." (Appx. B at A. 6).

As to Lang's Constitutional challenge to the Philadelphia Wage Tax being unconstitutional as a violation of due process, the court stated:

> "It is clear that several of the plaintiffs [sic] constitutional challenges to the Philadelphia Wage tax were resolved adversely to him in *Shaffer*[*v. Carter*, 252 U.S. 37 (1920)] and under the principle of *stare decisis* should be litigated no further." (Appx. B at A. 6).

Finally, as to Lang's argument that the imposition of the tax on him solely due to his travelling from New Jersey to the federal enclave was a violation of his Constitutional right to travel, the court stated;

> "We conclude that the plaintiff 's right of interstate travel, as perceived in the leading cases on the subject, is not infringed by the Philadelphia Wage Tax." (Appx. B at A. 6).

In conclusion, the court stated:

> "This review of the constitutional law governing the Philadelphia Wage Tax, as imposed on non-residents leads inevitably to the conclusion that the plaintiff 's challenge to the tax must fail on the basis of *stare decisis*." (Appx. B at A. 6).

The court thereafter entered an order sustaining the Appellees' Preliminary Objections in the Nature of a Demurrer and dismissed the Complaint in Equity with prejudice.

On appeal to the Commonwealth Court, after briefing and oral argument before the court *en banc*, the Commonwealth Court, by the Honorable Roy Wilkinson, Jr., affirmed the order of the lower court. On appeal to the Commonwealth Court, the Appellant raised all of these Constitutional questions by way of Questions Presented to the Court. Judge Wilkinson, in his opinion, reviewed the Constitutional challenges and

basically held that the decisions in *Kiker v. Philadelphia*, 346 Pa. 624, 31 A.2d 289, *cert. denied*, 320 U. S. 741 (1943), *Shaffer v. Carter*, 252 U. S. 37 (1920), and *Philadelphia v. Farrell*, 205 Pa. Super 263, 209 A.2d 867 (1965) control all of the Constitutional questions presented adversely to the position of Lang. (Appx. A at A. 1).

Lang, upon notification of this adverse determination by the Commonwealth Court filed a Petition for Allowance of Appeal with the Supreme Court of Pennsylvania, Eastern District. Such an appeal is within the discretionary jurisdiction of the Supreme Court of Pennsylvania, and the Prothonotary of the Supreme Court of Pennsylvania entered an Order on March 29, 1978, which Order denied the Petition for Allowance of Appeal.

PRESENTATION OF SUBSTANTIAL FEDERAL QUESTIONS

A. JURISDICTION UNDER 28 U.S.C. §1257(2)

This present appeal is from the affirmation by the Commonwealth Court of Pennsylvania of the order of the Court of Common Pleas dismissing the Appellant's Complaint in Equity, with prejudice, for failure to state a cause of action. The Supreme Court of Pennsylvania denied the Appellant a discretionary appeal from the Commonwealth Court's order, thereby making the decision of the Commonwealth Court a final judgment of the highest court in the Commonwealth of Pennsylvania.

The Philadelphia Wage Tax Ordinance, The Philadelphia Code Chapter 19-1500, is an Ordinance passed under the authority delegated by the legislature of the Commonwealth of Pennsylvania to the city of the first class, City of Philadelphia. Under Pennsylvania law, this ordinance is construed as a statute of the Commonwealth. *In Re Addison*, 385 Pa. 48 122 A.2d 272 (1956).

The Appellant raises two separate Constitutional questions as to the validity of the Philadelphia Wage Tax. The first question concerns Federal Constitutionality of imposing a tax upon the income of a non-resident of the Commonwealth of Pennsylvania employed upon a federal enclave who receives no benefits, does not have the right to vote, and merely travels through the Commonwealth to the enclave. It is the Appellant's contention that the application of the Philadelphia Wage Tax Ordinance to him is violative of the United States Constitution. Furthermore, the Appellant contends that the Philadelphia Wage Tax Ordinance by excluding from taxation the income of members of the United States Armed Forces, whether a resident or a non-resident of the City of Philadelphia, is a *prima facie* violation of the equal protection clause of

the fourteenth amendment of the United States Constitution. The Commonwealth Court of Pennsylvania reviewed both of these questions of violations to the United States Constitution and determined that the Philadelphia Wage Tax Ordinance, as applied to the Appellant and *prima facie*, were not violative of the United States Constitution.

It is, therefore, respectfully submitted that the present appeal is from a final decree of the highest court in the Commonwealth of Pennsylvania concerning a case in which there is drawn into question the validity of a State's statute on the grounds that it is repugnant to the United States Constitution both as applied to the Appellant and *prima facie*. Furthermore, the Court made a decision in favor of the validity of the state's statute. Thus, the present case is within the jurisdictional provisions of 28 U.S.C. §1257(2).

B. REASONS WHY THE FEDERAL QUESTIONS PRESENTED ARE SUBSTANTIAL

1. SUBSTANTIAL CONSTITUTIONAL RIGHTS AND PROTECTIONS HAVE BEEN VIOLATED BY THE IMPOSITION OF A CITY WAGE TAX UPON THE INCOME OF A NON-RESIDENT FEDERAL EMPLOYEE WORKING UPON A FEDERAL ENCLAVE.

Taxation on an individual's assets by a jurisdiction other than that of his residence has continually been a source of displeasure, vexation, and revolt.[2] *Declaration of Independence*. The present appeal concerns the imposition of such a tax upon a federal employee who is not a resident of the state of the local taxing authority and who works upon a federal enclave lo-

2. *See*, 4 U.S.C. §113. In this Statute, the United States Congress, on July 19, 1977, made clear that Congressmen were not subject to non-resident taxation by the state in which they live during their time of service in Washington, D.C.

cated on the exterior boundaries of the taxing authority. It is the Appellant's contention that this type of taxation is repugnant to the United States Constitution. This Court has never specifically reviewed the questions presented by this appeal.[3] The questions presented in this appeal are of great substance relating to the multitude of federal employees serving their country who suffer at the avarice of local governments.

a. THIS CASE CONCERNS THE INTERPRETATION OF A FEDERAL STATUTE IN CONTRAVENTION OF THE CONSTITUTION AND WHICH HAS NEVER BEEN SPECIFICALLY CONSTRUED BY THIS HONORABLE COURT.

The "Founding Fathers", in an attempt to provide the federal government with a haven for the uninterrupted operation of the federal government, authorized the establishment of federal enclaves throughout the states. U.S. Const. art. I, sec. 8, cl. 17.[4] It had always been the law of the United States that income earned by a non-resident upon such enclaves was not within the taxing jurisdiction of the state within which the enclave was located.[5] *James v. Dravo Contracting Co.*, 302 U.S. 134 (1931).

Notwithstanding this Constitutional provision and this Court's determination of the law, the Supreme Court of Pennsylvania in *Kiker v. Philadelphia*, 346 Pa. 624, 31 A.2d 289 (1943) interpreted a federal statute to abrogate the Constitution of the United States. The statute involved is commonly known as the Buck

3. Certiorari was denied in the seminal case in this area, *Kiker v. Philadelphia*, 346 Pa. 624, 31 A.2d 289, *cert. denied*, 320 U.S. 741 (1943).

4. U.S. Att'y Gen., Report of the Interdepartmental Committee for the Study of Jurisdiction over Federal Areas Within the States, pt. II, at 15-27 (1957).

5. *cf.* 5 U.S.C. §5520. The Federal Government Agencies may only withhold city income taxes for individuals who are residents of the taxing authority.

Act, 4 U.S.C. §§105-110. This Act was interpreted by the Supreme Court of Pennsylvania to be a recession to the state of the power to tax the income of non-residents who worked upon the federal enclave. *Id* at 638, 31 A.2d at 297. This Court has never reviewed the Supreme Court of Pennsylvania's decision in *Kiker, supra,* since it denied *certiorari*. 320 U.S. 741 (1943).

A substantial federal question still exists thirty-five years after the *Kiker* decision as to the proper interpretation of the § 106 of the Buck Act. (Appx. F at A. 22). The interpretation of this statute contrary to the limitations of the Constitution would appear to be unjustified from a reading of the words of this statute. This statute was only intended to be a codification of the state of the law in existence at the time. *See, Philadelphia v. Schaller,* 148 Pa. Super. 276, 25 A.2d 406, 410 (1942), *cert. denied,* 317 U.S. 649 (1942). All that was stated in this section of the Act was that a person could not be relieved from liability which he already had because of the fact that he resided upon any type of a federal land or that such person received his income from transactions upon any type federal land.[6] It was not specifically directed to federal enclaves and this section of the Act is totally devoid of any words of recession. There is not the required clear, unambiguous recession of the Constitutional powers of Congress by this Act. *Kern-Limerick Inc. v. Scurlock,* 347 U.S. 110 (1954).

Although many federal employees have been effected by this section of the Buck Act, this Court has never specifically reviewed it. The only peripheral review was *Howard v. Commissioners of Sinking Fund of City of Louisville,* 344 U.S. 624 (1953). In *Howard,* this Court was only requested to determine whether the Louisville tax was properly "an income tax" under

6. 4 U.S.C. §110(e). This Section of The Buck Act defines the land involved as being "held or acquired by or for the use of" the Federal Government. This, therefore, includes land purchased, leased, or ceded.

§110(c) of the Buck Act and whether Louisville could geographically annex a federal enclave into the boundaries of the city.

The propriety of the decision of the Supreme Court of Pennsylvania in *Kiker, supra,* is one which cries out for a federal court's review because of the substantial Constitutional and federal statutory questions, and the obvious jealousy of a state's courts for its own tax revenues from those who are disenfranchised; nevertheless, because of the Johnson Act, 28 U.S.C. §1341, such a review directly in the federal district court is not allowed. *Non-residents Taxpayers Association v. Philadelphia,* 341 F. Supp. 1139 (D. N. J. 1971), *aff'd.* 478 F.2d 456 (3d Cir. 1973). The Appellant in attempting to comply with requirements of the Johnson Act has been denied a factual review of the issues involved by the lower court and the Commonwealth Court's refusal to review the *Kiker* decision on the merits and the Supreme Court of Pennsylvania's refusal to allow a discretionary appeal. Therefore, this case is ripe for review under the Johnson Act.

b. THE DETERMINATION BY THE STATE COURT CONCERNING THE IMPOSITION OF AN INCOME TAX UPON AN INDIVIDUAL WHO RECEIVES NO BENEFITS FROM THE TAXING AUTHORITY OTHER THAN TRAVELLING THROUGH IT IS NOT IN ACCORD WITH THE APPLICABLE DECISIONS OF THIS COURT CONCERNING DUE PROCESS AND THE RIGHT TO TRAVEL.

The Appellant has alleged that he receives no benefits from the taxing authority while performing his services upon a federal enclave and that the only contact with the taxing authority is while travelling from his home state to the federal enclave. The total lack of a valid, taxable nexus between the taxing authority and the Appellant, makes this tax contrary to the case law established by this Court relating to the due pro-

cess of law under the fourteenth amendment of the Constitution, as well as the basic right to travel as guaranteed by our Constitution. Where the taxing authority is in no position to render services or any other benefits to the person paying the tax, this is extortion, not taxation. Cooley, *Taxation* (4th Ed.) 223.

It has long been established that the taxing power requires the rendering of substantially equivalent protection and services to the taxpayer. *Union Refrigerator Transit Co. v. Kentucky*, 199 U.S. 194 (1905). The right of a state to tax a non-resident is inherent with the actual exercise by that taxpayer of the right to carry on business or an occupation within the umbrella of protection of the taxing authority. *Shaffer v. Carter*, 252 U.S. 37 (1920). The basic test for due process is that the taxing authority must *give* something to the taxpayer. *Wisconsin v. J. C. Penney Co.*, 311 U.S. 435(1940). A taxing authority of a non-resident must have power to control the object of its taxation, and it cannot tax where it lacked total authority over the taxpayers' activities. *Connecticut General Insurance Co. v. Johnson*, 303 U.S. 77 (1938). This Court has stated that the Constitution requires "some definite link, minimum connection, between a state and the person, property or transaction it seeks to tax".[7] *Miller Co. v. State of Maryland*, 347 U.S. 340, 344-345 (1954). Based upon these tests, the imposition of the Philadelphia Wage Tax on the Appellant who receives all of his protection, benefits and rights to operate directly from the United States Government would clearly be violative of due process.

Nevertheless, the courts below relied upon the Supreme Court of Pennsylvania's decision in *Kiker*, *supra*, to abort the Appellant's right to prove that he gets nothing from the city and is outside of the city's

7. *See, Kulko v. Superior Ct. of California*, 46 L.W. 4421, 4424 n.7 (5/15/78). Services provided to a child by a state could not be attributed as a minimum contact or link to the parent.

control. In *Kiker*, the Supreme Court of Pennsylvania had no factual record of any benefit provided by the City to the federal employee. *Kiker*, like the present one, came up on Preliminary Objections. The Supreme Court of Pennsylvania, nevertheless, tried to gracefully side-step this void of real benefits by stating that there was an "obligation" upon the City to provide benefits to Mr. Kiker at such time as the national government neglects or refuses to furnish them[8], and that the fact that no such protection or benefits are actually provided "does not justify our invalidation of the income tax in question". *Id* at 632-633, 32 A.2d at 294-295. Furthermore, the Supreme Court of Pennsylvania took judicial notice of the City's assistance to Mr. Kiker in his travel to and from New Jersey to the federal enclave and concluded that this was "decidedly a benefit to him". *Id.* The *Kiker* Court concluded that these hypothetical benefits were sufficient to survive the due process challenge.[9]

There is no "link" or "nexus" between the Appellant and the City. He receives no actual benefit to himself and has taken no action, including voting, to consent to such confiscatory taxation.[10] The only "contact" is the Appellant's short period of travel from his home state to the federal enclave through the City. Although the *Kiker*, *supra*, and the Common Pleas Court below indicated that travel to the enclave was a properly tax-

8. *But, See*, NOTES AND LEGISLATION, The Philadelphia Wage Tax and Its Litigation, 17 Temple L.Q. 272, 275-276 (1943).

9. Other jurisdictions since *Kiker* have avoided doing their own independent analyses of this problem by merely citing the *Kiker* Court's ingenious side-stepping maneuver. *Cincinnati v. Faig*, 145 N.E.2d 563 (Ohio Muni. Ct., 1957).

10. Taxes may only be imposed by the free consent of those who pay or their representatives. *State v. Williams*, 68 Conn. 131, 35 A.24 (1896) *aff'd.*, 170 U.S. 304 (1898). It has long been recognized that the ballot box is the only manner in which the taxpayer may effect the manner or rate of taxation. *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819).

able incident, such taxation is an impermissible exaction on the right to travel through the states to land maintained by the federal government. *Crandall v. Nevada*, 73 U.S. (6 Wall.) 35, 44 (1868).

It is respectfully submitted that this present appeal contains substantial federal questions which have never been reviewed by this Honorable Court concerning a violation of the due process clause of the fourteenth amendment and the right to travel as related to the non-resident taxpayer who receives no benefits, protection or services from the taxing authority.

c. CONCLUSION

This present appeal presents to this Honorable Court an opportunity to review the Constitutional ramifications of taxing a non-resident who is employed upon a federal enclave. There are substantial questions of Constitutional law and federal statutory interpretation which after brief and argument would justify a reversal of the Commonwealth Court of Pennsylvania's decision so as to protect the rights of the Appellant in the present case.

2. THE DETERMINATION THAT THE EXCLUSION OF THE WAGES OF ALL MEMBERS OF THE UNITED STATES ARMED FORCES FROM THE CITY'S WAGE TAX IS EQUITABLE IS NOT IN ACCORD WITH THE MANNER IN WHICH THIS HONORABLE COURT WOULD MAKE THIS DETERMINATION.

Without regard to whether a member of the U. S. Armed Forces, is a resident or not of the City, the Philadelphia Wage Tax Ordinance excludes his wages from taxation. Philadelphia Code §19-1501(8)(c) (Appx. E at A. 19). All other similar compensations earned within the City are subject to taxation. Such an exclusion from taxation lacks any reasonable justification and is wholly arbitrary in violation of the equal

protection guaranteed to all other persons obligated to pay this tax.

Both the Commonwealth Court and the Court of Common Pleas in reviewing the Appellant's contention that the wage tax violates equal protection relied upon the decision in *Philadelphia v. Farrell*, 205 Pa. Super. 263, 209 A.2d 867 (1965). (Appx. A at A. 1; Appx. B at A. 6). Due to this prior decision, both courts felt there was no need to take any additional evidence to determine this question.

The Superior Court of Pennsylvania's decision in *Farrell, supra*, was merely a *per curiam* affirmance of a Philadelphia County Court decision on a Motion for Judgment on the Pleadings. *Philadelphia v. Farrell*, 35 D&C 2d 177 (1964). In that case the defendant raised as a defense to the action for collection the unconstitutionality of the Wage Tax under the Uniformity Clause of the Pennsylvania Constitution.[11] In passing on this question of constitutionality solely based upon the pleadings, the county court judge stated:

> "We find that the basis for classification by the taxing authority in this case is entirely reasonable. It recognizes that serving in the armed services represents a sacrifice which should entitle exemption from the type of tax imposed." 35 D&C 2d at 179.

The Commonwealth Court and the Court of Common Pleas in this present case adopted the rationale of the county court judge in *Farrell*.

This Court has consistently stated that although a local government's taxing authority need not require identity of treatment it must meet at least minimal standards of equal protection. In *Walters v. City of St. Louis*, 347 U.S. 231 (1954), this Court was reviewing an income tax ordinance imposed by that city as to its compliance with equal protection. In that decision the

11. Pa. Const., art. VII, sec. 1.

Court set forth what equal protection requires as follows:

> "It only requires that classification rest on real and not feigned differences, that the distinction have some relevance to the purpose for which the classification is made, and that the different treatment be not so disparate, relative to the difference in classification, as to be wholly arbitrary." U.S. at 237.

In the present case there is no real difference between the wages earned by a member of the U. S. Armed Forces and by any other wage earner. To classify an exclusion based upon a measure of "sacrifice" is the epitomy of a feigned difference. If there is in fact such a "sacrifice" the record in both *Farrell* and the present case is totally devoid of any proof, and Appellant has been denied an opportunity to present any evidence to the contrary.[12]

Therefore this Appeal presents a substantial federal question concerning the violation of the equal protection clause of the fourteenth amendment of the United States Constitution as to the discriminatory exclusion of the wages of members of the United States Armed Forces who are residents of the City. It is submitted that after brief and oral argument this Honorable Court would conclude that the determination of

12. United States Congress has determined that there is a need for exemption from non-resident income taxation by members of the United States Armed Forces due to their mobility; however, their resident government has the absolute authority to impose a tax on their income. 50 U.S.C. §574(1); *California v. Buzard*, 382 U.S. 386 (1966). Thus, any need to protect a member of the U.S. Armed Forces who has *sacrificed* for his government is unnecessary as the federal government has already provided the member with such protection, and the entire rationale of the exclusion, as set forth in *Farrell* and adopted by the courts in the present case, is in reality non-existent and pre-empted.

the Commonwealth Court of Pennsylvania was not in accord with the law of the United States of America.

Respectfully submitted,

Kenneth E Aaron

KENNETH E. AARON,
Counsel for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of June, 1978, three (3) copies of the Jurisdictional Statement were personally served to Stewart M. Weintraub, Esquire, at his office at 1580 Municipal Services Building, Philadelphia, Pennsylvania, 19107, as counsel for the Appellees. I further certify that all parties required to be served have been served.

By Kenneth E Aaron

KENNETH E. AARON
Counsel for Appellant
935 Lafayette Building
Philadelphia, Pennsylvania 19106
(215) 629-1100

JOHN H. LANG,
Appellant
v.
CITY OF PHILADELPHIA
ET AL.

IN THE
COMMONWEALTH COURT
OF PENNSYLVANIA
No. 877
Commonwealth Docket
1976

BEFORE: HONORABLE JAMES S. BOWMAN, *President Judge*
HONORABLE JAMES C. CRUMLISH, JR., *Judge*
HONORABLE HARRY A. KRAMER, *Judge*
HONORABLE ROY WILKINSON, JR., *Judge*
HONORABLE GLENN E. MENCER, *Judge*
HONORABLE THEODORE O. ROGERS, *Judge*
HONORABLE GENEVIEVE BLATT, *Judge*

ARGUED: April 5, 1977

Filed September 12, 1977

OPINION BY JUDGE WILKINSON, JR.

This is an appeal from an order dismissing appellant's complaint in equity filed in the Court of Common Pleas of Philadelphia County challenging Philadelphia's taxation of income earned by nonresidents while working within the naval shipyard on League Island.[1] We affirm.

Appellant is a resident of the State of New Jersey and is employed as a civilian at the federal enclave at the United States shipyard on League Island. On August 25, 1975, the appellant filed the complaint at issue. It challenged the Philadelphia tax on numerous constitutional grounds and requested that an injunction be issued to restrain the assessment and collection

1. Philadelphia, Pa. Code, §19-1500 et seq. (1973) is the ordinance applicable to such taxation.

of the tax from appellant. The appellees responded by filing numerous preliminary objections to the complaint based upon a variety of grounds. Subsequent to written and oral argument by the parties on these objections, an order dated April 13, 1976 was issued by the lower court sustaining the objections in the nature of a demurrer and dismissing the complaint with prejudice.

Appellant's arguments on appeal may be grouped into three primary categories: (1) the demurrer fails to state specifically the ground it relied upon; (2) the doctrine of *stare decisis* was improperly applied; and (3) the appellant should have been permitted to amend his complaint. We do not find any of these arguments persuasive.

There is no dispute by the appellees that the demurrer sustained by the lower court was "general" in nature. Appellant correctly points out that Pa. R.C.P. 1028[2] states that a preliminary objection in the nature of a demurrer must state specifically the grounds it relies upon. However, at no time prior to this appeal did the appellant raise any argument as to the lack of specificity of the demurrer. Having failed to raise this question in the court below, it is too late to do so here.

On the merits, appellant first argues that the Philadelphia tax in question violates Article I, Section 8, Clause 17 of the United States Constitution. In adopting such a position, appellant would have us disregard the Pennsylvania Supreme Court decision in *Kiker v. Philadelphia*, 346 Pa. 624, 31 A.2d 289, *cert. denied*, 320 U.S. 741 (1943). Even if such were possible, it should be sufficiently clear from our recent decisions that we will not do so. *City of Philadelphia v. Kenny*, 28 Pa. Commonwealth Ct. 531, 369 A.2d 1343 (1977) (allocatur denied); *City of Philadelphia v. Konopacki*, 27 Pa. Commonwealth Ct. 391, 366 A.2d 608 (1976). The decision in *Kiker, supra*, is controlling on this issue.

2. Pa. R.C.P. 1028(a) reads:
"(a) Preliminary objections shall state specifically the grounds relied upon."

Appellant next contends that his Fourteenth Amendment due-process rights are being violated by the taxation of his wages for the reason that he receives no benefit from Philadelphia. Again, *Kiker, supra*, is controlling.

Appellant argues that taxation of his wages is a violation of his due-process rights as a deprivation of property without legal recourse because he has no right to vote in Philadelphia. The decision of the Supreme Court of the United States in *Shaffer v. Carter*, 252 U.S. 37 (1920), makes it clear that a nonresident wage tax such as the one at issue is not violative of due-process rights.

Appellant advances the theory that the exemption of the earnings of members of the armed forces under the Philadelphia Code is constitutionally impermissible. This very provision was approved by our Superior Court in *Philadelphia v. Farrell*, 205 Pa. Superior Ct. 263, 209 A.2d 867 (1965). We agree that this is a valid classification.

Appellant argues that the Philadelphia tax in question places a chilling effect and burden on his interstate movement in violation of his constitutional right to travel. Appellant's argument is premised on the notion that the basis for the taxation of his wages is his passage through the City of Philadelphia to the federal enclave. This contention ignores the holdings in both *Kiker, supra* and *Konopacki, supra*, which indicate that for purposes of taxation League Island is within the City of Philadelphia.

The final argument which appellant poses is that the lower court erred in failing to allow him to amend his complaint to state a proper cause of action where he alleged a policy of selective assessment and discriminatory enforcement of the tax by the taxing au-

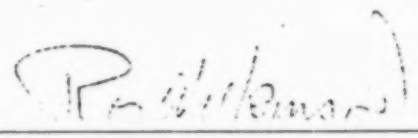
thority. The basic legal theory behind such an argument is that such actions would deny equal protection under the laws to the appellant. A necessary element of such a theory is that appellant demonstrate that the selective enforcement of the tax be intentional and based upon an unjustifiable and arbitrary standard. *Oyler v. Boles*, 268 U.S. 448 (1962). Appellant's complaint only makes the bare assertion that there is unlawful selective enforcement of the tax by the taxing authority. Such a statement, without more, is insufficient to state a proper cause of action.

The lower court properly sustained the appellees' preliminary objection in the nature of a demurrer. We affirm.

Accordingly, we will enter the following

ORDER

AND NOW, September 12, 1977, the order of the Court of Common Pleas of Philadelphia County at No. 3301 August term, 1975, sustaining the preliminary objections of the appellee City of Philadelphia and dismissing the complaint of the appellant John H. Lang with prejudice, is hereby affirmed.



ROY WILKINSON, JR., *Judge*

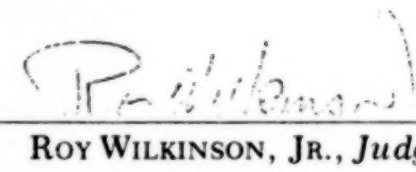
Judge Kramer did not participate in the decision in this case.

JOHN H. LANG, *Appellant*
v.
CITY OF PHILADELPHIA ET AL.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA
No. 877 Commonwealth Docket 1976

ORDER

AND NOW, September 12, 1977, the order of the Court of Common Pleas of Philadelphia County at No. 3301 August term, 1975, sustaining the preliminary objections of the appellee City of Philadelphia and dismissing the complaint of the appellant John H. Lang with prejudice, is hereby affirmed.



ROY WILKINSON, JR., *Judge*

Judge Kramer did not participate in the decision in this case.

FIRST JUDICIAL DISTRICT OF
PENNSYLVANIA

JOHN H. LANG
v.
CITY OF PHILADELPHIA,
ET AL.

COURT OF COMMON PLEAS
August Term 1975
No. 3301

OPINION and ORDER

Plaintiff John H. Lang filed this suit in Equity to enjoin the City of Philadelphia from assessing its wage tax, plus interest and penalties, on his 1975 income derived from his employment at the Philadelphia Naval Shipyard. Mr. Lang resides in Willingboro, New Jersey, and commutes daily to the shipyard at League Island where he works as a senior civilian in the office of Pera (CRUDES). On June 9, 1975, the plaintiff received a notice informing him that he had been assessed $204.56 in taxes due on his 1974 income, plus interest and penalties totalling $28.64. On July 29, 1974, Lang filed a "cautionary" Petition for Review with the Tax Review Board of the City of Philadelphia. His Complaint in Equity now seeks to enjoin the Tax Review Board from assessing and collecting from him the Philadelphia Wage Tax on the ground that the tax violates several provisions of the Constitutions of the United States and Pennsylvania and on the additional ground that the Board is without jurisdiction and power to determine the validity of his constitutional challenges to the tax. The City filed Preliminary Objections which challenged the jurisdiction of the Court and which demurred to the Complaint for the reason that it failed to set forth a cause of action for relief in Equity.

Although Mr. Lang sued in his own name only, there is every reason to believe that he is suing on behalf of other members of the Non-Resident Taxpayers

Association of Pennsylvania and New Jersey (N.R.T.A.). Mr. William Gould, president of the N.R.T.A., expressed the complaint of the non-resident taxpayer, stripped of all legalese, in an article in *The Evening Bulletin*, August 26, 1975, p. 10-A:

> "I don't call the Philadelphia Fire Department, and I don't have my trash collected by Philadelphia. That's because I live in Mount Laurel, New Jersey. So why should I pay a city wage tax just because I work in Philadelphia."

At a partial evidentiary hearing on the Preliminary Injunction, the plaintiff testified that on each working day he drives across the Walt Whitman bridge into Philadelphia and then drives approximately one mile to the gate of the Naval Shipyard at League Island. He claims that the shipyard is an exclusive federal enclave that is not subject to the taxing power of the City. Since the shipyard provides its own police and fire protection, he receives rather little benefit from the taxes the City demands of him. He further claims that since he is a resident of New Jersey, he has no vote in Philadelphia and he therefore has no influence on any legislation the City Council may consider. The plaintiff 's Complaint in Equity transforms his contentions about his place of employment as a federal enclave, the supposedly minimal protection he receives from the City, and his lack of representation in the taxing authority into a constitutional challenge to the validity of the Philadelphia Wage Tax as it is applied to non-residents. The plaintiff argues that the Wage Tax cannot be allowed to stand because it violates the following constitutional provisions: Article I, section 8, clause 17; the Due Process clause of the Fourteenth Amendment; the Equal Protection clause; the Privileges and Immunities clause of Article IV, section 2, clause 1; article VIII, section I of the Pennsylvania Constitution; and the right of interstate travel as perceived chiefly in

Shapiro v. Thompson, 394 U.S. 618, 89 S.Ct. 1322, 22 L. Ed 2d 600 (1969).

The plaintiff 's challenges to the tax as violative of Article I, section 8, clause 17 of the United States Constitution, the Equal Protection Clause of the Fourteenth Amendment, and Article VIII, section I of the Pennsylvania Constitution have been largely determined in former cases and may be disposed of summarily.

Article I, section 8, clause 17 grants to the Congress "exclusive legislation" over lands that the states have ceded to the federal government. Plaintiff 's argument that the Wage Tax violates this clause was made and rejected in *Kiker v. Philadelphia*, 346 Pa. 624, 31 A.2d 289 (1943). In *Kiker* the Court recognized that although the Commonwealth had ceded jurisdiction over League Island to the federal government, the Commonwealth could have reserved to itself the power of taxation. The Court found that the Congress had created a recession to the state of the right to tax and that an acceptance of that recession would be presumed in the absence of a contrary intent. As no contrary intent appeared on the record, the Court concluded that the City had jurisdiction to tax the incomes of non-resident employees of the federal government at League Island.

The question of the City's jurisdiction was raised again in the *Application of Thompson*, 157 F. Supp. 93 (E.D.Pa. 1957). Thompson was a delinquent non-resident taxpayer who petitioned the federal district court for a Writ of Habeas Corpus after he had been arrested at the shipyard and taken into the custody of a Philadelphia deputy sheriff. In granting a motion to dismiss his petition, the Court cited the Buck Act, 4 U.S.C.A. 104-110, section 106 of which reads:

> (a) No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

The Court found that this statute had been construed to authorize a city to impose a tax on civilian employees of the U.S. navy for the privilege of working in a naval ordinance plant in such a city. Citing *Howard v. Commissioners*, 344 U.S. 624, 73 S. Ct. 465, 97 L. Ed 617 (1953). The Court further observed:

> "It has been recognized that income of non-resident federal employees earned in a state or subdivision may be taxed by such jurisdiction." 157 F. Supp. at 98.

The Court's authority for this conclusion was *Shaffer v. Carter*, 252 U.S. 37, 40 S. Ct. 221, 64 L. Ed. 445 (1920), which will be discussed later in this opinion in connection with some of plaintiff 's other constitutional objections to the wage tax.

Plaintiff invokes the Equal Protection clause on two grounds. First, he argues that the imposition by the Wage Tax Ordinance of an "employment" tax on non-residents, but not on residents, is arbitrary, capricious, and irrational. There is absolutely no basis for this argument. Chapter 19-1500 of the Philadelphia Code, entitled "Wage and Net Profits Tax," imposes the same tax on income earned by residents of Philadelphia that it does on income earned in Philadelphia by non-residents. In view of the equal treatment accorded the resident and non-resident taxpayer, it is difficult to perceive an equal protection violation.

Secondly, plaintiff argues that the exemption from taxation of the earnings of members of the Armed

Forces in section 19-1501(8)(c) of the Philadelphia Code violates the Equal Protection clause. This classification was found "entirely reasonable" in *Philadelphia v. Farrell*, 35 D. & C. 2d 177 (1964), aff 'd. 205 Pa. Super. 263 (1965), and we see no reason to disturb that judgment. In taxation, even more than in other fields, legislatures possess the greatest freedom in classification. *Madden v. Kentucky*, 309 U.S. 83, 88, 60 S. Ct. 406, 408, 84 L. Ed 590 (1940). This classification is clearly not suspect and the statute is therefore not subject to strict scrutiny.

Plaintiff further argues that the exemption of servicemen's earnings from taxation violates Article VIII, section 1 of the Pennsylvania Constitution, the tax uniformity clause. This argument ignores the Pennsylvania cases that have allowed different tax treatment among classes of taxpayers provided the distinction is reasonable. "The test of uniformity is whether there is a reasonable distinction and difference between the classes of taxpayers sufficient to justify different tax treatment." *F.J. Busse Co. v. Pittsburgh*, 443 Pa. 349, 358, 279 A.2d 14 (1971). As in the case of *Farrell*, *supra*, we do not hesitate to find a reasonable distinction between the civilian and military classes of taxpayers sufficient to justify the different tax treatment.

The validity of a state income tax imposed on nonresidents who earned income in the state was challenged and upheld in *Shaffer v. Carter*, 252 U.S. 37, 40 S. Ct. 221, 64 L. Ed. 445 (1920). Shaffer was an Illinois businessman and a resident of Chicago who owned oil and gas leases and certain oil-producing land in Oklahoma. When Oklahoma assessed its income tax on his earnings during the year 1916 and attempted to place a lien on all of his property within its borders, Shaffer challenged the tax on several constitutional grounds: that Oklahoma lacked jurisdiction to impose the tax; that the tax violated the due process and equal protection clauses of the Fourteenth Amendment; that it violated the Privileges and Immunities Clause of Article IV, section 2; and that the tax constituted an undue burden on interstate commerce. The Court seemed to find no merit in the due process and equal protection arguments and, in discussing the power of the state to impose the tax, said:

> And we deem it clear, upon principle as well as authority, that just as a state may impose general income taxes upon its own citizens and residents whose persons are subject to its control, it may, as a necessary consequence, levy a duty of like character, and not more onerous in its effect, upon incomes accruing to nonresidents from their property or business within the state, or their occupations carried on therein, enforcing payment, so far as it can, by the exercise of a just control over persons and property within its borders. (citing cases) 40 S.Ct. 225

Since the tax was imposed on residents and nonresidents alike, the Court refused to find a violation of the Privileges and Immunities Clause. The Court found that under this clause the non-resident taxpayer has the right to equal treatment but not to preferential treatment or to an exemption from taxation:

> That a state, consistently with the federal Constitution, may not prohibit the citizens of other states from carrying on legitimate business within its borders like its own citizens, of course is granted; but it does not follow that the business of nonresidents may not be required to make a ratable contribution in taxes for the support of the government. On the contrary, the very fact that a citizen of one state has the right to hold property or carry on an occupation or business in another is a very reasonable ground for subjecting such nonresident, although not personally, yet to the extent of his property held, or his occupation or business

> carried on therein, to a duty to pay taxes not more onerous in effect than those imposed under like circumstances upon citizens of the latter state. Section 2 of article 4 of the Constitution entitles him to the privilege and immunities of a citizen, but no more; not to an entire immunity from taxation, nor to any preferential treatment as compared with resident citizens. It protects him against discriminatory taxation, but gives him no right to be favored by discrimination or exemption. See *Ward v. Maryland*, 12 Wall. 418, 430, 20 L. Ed. 449. 40 S. Ct. 225-226

It is clear that several of the plaintiffs constitutional challenges to the Philadelphia Wage tax were resolved adversely to him in *Shaffer* and under the principle of *stare decisis* should be litigated no further.

The City Solicitor's Brief Sur Preliminary Objections suggests that the plaintiff may be attempting to bring his case within the parameters of *Austin v. New Hampshire*, 420 U.S. 656, 95 S. Ct. 1191, —— L.Ed 2d ——, 43 L. W. 4400 (1975). *Austin* invalidated the New Hampshire Commuter Income Tax as violative of the Privileges and Immunities Clause. New Hampshire imposed a tax of four percent (4%) on income in excess of $2,000, earned by non-residents of the state only who were employed within the state, but imposed no income tax whatever on its own residents. The Supreme Court cited *Shaffer, supra*, with approval and found that the discriminatory treatment accorded non-residents violated the Privileges and Immunities Clause of Article IV:

> *Shaffer*, upheld the Oklahoma tax on income derived from local property and business by a non-resident where the State also taxed the income — from wherever derived — of its own citizens. Putting aside 'theoretical distinctions' and looking to 'the practical effect and operations' of the scheme,

> the non-resident was not treated more onerously than the resident in any particular, and in fact was called upon to make no more than his ratable contribution to the support of the State government. 95 S. Ct. at 1196-97, 43 L.W. at 4402

Since the Philadelphia Wage Tax is imposed equally on the incomes of residents from wherever derived and on the income of non-residents derived from Philadelphia, there is clearly no violation of Article IV, section 2, of the United States Constitution. Both the holding of *Shaffer* and the dictum of *Austin* directly rebut the plaintiff 's position on this point.

In Count Seven of the Complaint, the plaintiff argues that the imposition of a tax on one who travels from one state to another in order to earn a living, where the tax is greatly disproportionate to the amount of services rendered by the taxing authority, places an unconstitutional burden and a "chilling effect" on the plaintiff 's right to interstate travel as guaranteed to him by the United States Constitution. *Shapiro v. Thompson*, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed 2d 600 (1969), invalidated state and District of Columbia statutes which restricted certain welfare benefits to persons who had resided within the jurisdiction for more than a year because the statutes infringed the right to travel among the states as well as the Equal Protection clause:

> "This Court long ago recognized that the nature of our federal union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement." 89 S. Ct. at 1329.

The Court further found that it had "no occasion to ascribe the source of this right to travel interstate to a particular constitutional provision."

The fundamental importance of the right to travel interstate was reaffirmed in two leading cases decided under the aegis of *Shapiro: Dunn v. Blumstein*, 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed 2d 274 (1972), invalidated a Tennessee statute requiring a prospective voter to have been a resident of the state for one year and of the county for three months; and *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 94 S. Ct. 1076, 39 L. Ed 2d 306 (1974), invalidated an Arizona statute requiring a year's residence in a county as a condition to receiving non-emergency hospitalization or medical care at the county's expense. Both *Dunn* and *Memorial Hospital* found that the statutes burdened the right to travel and created invidious discriminations which did not further any compelling state interest and which therefore violated the Equal Protection clause. Even though the Equal Protection rationale applied in these cases may have been eclipsed by the more recent case of *Sosna v. Iowa*, —— U.S. ——, 95 S. Ct. 553, —— L. Ed 2d —— (1975)[1], we do not view this case as presenting a serious equal protection challenge to the Wage Tax under either the broad interpretation given the clause in *Shapiro* or the narrow interpretation given it in *Sosna*.

Shapiro, Dunn, and *Memorial Hospital* dealt with residency requirements that the citizen had to fulfill before he could exercise certain rights and privileges afforded him by the state. In this case the plaintiff objects to a wage tax imposed on the salary he earns in Philadelphia. In return for this tax, the plaintiff receives the benefit of police and fire protection when he is within the city limits. Since the plaintiff commutes to and from work five days a week, we do not consider this protection minimal. The plaintiff is not denied the exercise of rights that were denied the welfare mother in *Shapiro*, the voter in *Blumstein*, or the indigent sick

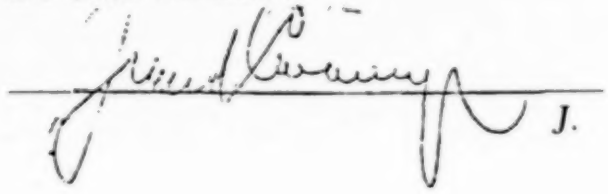
1. Upholding a statute requiring a year of residency before a person could sue for a divorce.

man in *Memorial Hospital*. The operation of the Wage Tax does not deny the plaintiff the exercise of rights and privileges afforded him by the laws of either Pennsylvania or New Jersey. The plaintiff, like the non-resident taxpayer in *Shaffer*, is not treated more onerously than the resident in any way and in fact is called on to make no more than his ratable contribution to the support of the City government. We conclude that the plaintiff 's right of interstate travel, as perceived in the leading cases on the subject, is not infringed by the Philadelphia Wage Tax.

This review of the constitutional law governing Philadelphia Wage Tax as imposed on non-residents leads inevitably to the conclusion that the plaintiff 's challenge to the tax must fail on the basis of *stare decisis*. The various constitutional issues the plaintiff raises have either been resolved adversely to him in prior litigation or are patently without merit. Non-resident taxpayers from New Jersey and the counties surrounding Philadelphia have litigated the legitimacy of this tax on several occasions during the last thirty-five years. No matter which legal issue or issues the plaintiffs invoked, they have never succeeded in having the tax declared unconstitutional. We agree with Judge Weiner's conclusion in *Non-Resident Taxpayers Association v. Murray*, 347 F. Supp. 399 (E.D.Pa. 1972): "The authority of the City of Philadelphia to require non-resident employees to file tax returns and to pay a wage tax can no longer be controverted." 347 F. Supp. at 401. We are therefore in agreement with the position taken by the City Solicitor in his Preliminary Objections in the Nature of a Demurrer and in his accompanying brief that the Complaint in Equity fails to state a cause of action and that is must be dismissed.

ACCORDINGLY, this 13th day of April, 1976, the Preliminary Objections in the Nature of a Demurrer are SUSTAINED and the Complaint is DISMISSED with prejudice.

BY THE COURT:



J.

SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

March 29, 1978

Kenneth E. Aaron, Esq.
935 Lafayette Building
Philadelphia, Pa. 19107

Re: John H. Lang, Petitioner v. City of Phila., et al. No. 3233 Allocatur Docket

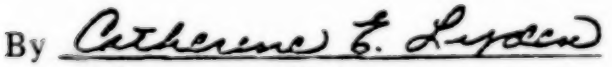
Dear Mr. Aaron:

This is to advise that the following Order has been endorsed on the Petition for Allowance of Appeal filed in the above-captioned matter:

"March 23, 1978
Petition denied
Per Curiam"

Very truly yours,

SALLY MRVOS
Prothonotary

By 

CATHERINE E. LYDEN
Deputy Prothonotary

IN THE
COMMONWEALTH COURT OF PENNSYLVANIA

JOHN H. LANG, *Appellant* — No. 877 C.D. 1976

vs.

CITY OF PHILADELPHIA
and
CHARLES E. DORFMAN
and
NICHOLAS D'ALESSANDRO
and
DAVID A. KRAFTSOW
and
ANDREW G. FREEMAN
and
KENNETH L. MOORE
and
STANLEY J. BERNSTEIN,
Appellees

NOTICE OF APPEAL

TO THE PROTHONOTARY:

Please be notified that JOHN H. LANG, Appellant before the Honorable Court, appeals the entire Judgment of the Honorable Court of September 12, 1977 in the above captioned matter to the Supreme Court of the United States. This appeal is taken under 28 U.S.C. §1257(2).

Kenneth E Aaron

By: KENNETH E. AARON,
Attorney for the Appellant
Suite 935 Lafayette Building
Philadelphia, Pennsylvania
19106
(215) 629-1100

Filed: June 15, 1978

THE PHILADELPHIA CODE, AS AMENDED
§19-1501(8)

(8) *Salaries, Wages, Commissions and Other Compensation.* All salaries, wages, commissions, bonuses, incentive payments, fees and tips that may accrue or be received by an individual, whether directly or through an agent and whether in cash or in property, for services rendered, but excluding:

(a) periodical payments for sick or disability benefits and those commonly recognized as old age benefits;

(b) retirement pay, or pensions paid to persons retired from service after reaching a specific age or after a stated period of employment;

(c) any wages or compensation paid by the United States to any person for active service in the Army, Navy or Air Force of the United States;

(d) any bonus or additional compensation paid by the United States, this Commonwealth, or any other state for such service;

(e) any statutory per diem compensation paid any witness.

THE PHILADELPHIA CODE, AS AMENDED
§19-1502(1)

SECTION 1. Section 19-1502(1) of The Philadelphia Code is amended as follows:

§19-1502. Imposition of Tax

(1) An annual tax for general revenue purposes is imposed as follows:

(a) On salaries, wages, commissions, and other compensation earned by residents of Philadelphia after January 1, 1950 at the rate of one and one-quarter percent, after January 1, 1957 at the rate of one and one-half percent, after January 1, 1961 at the rate of one and five-eighths percent, after January 1, 1966 at the rate of two percent, after July 1, 1969 at the rate of three percent [and] after July 1, 1971 at the rate of three and five-sixteenths percent *and after July 1, 1976 at the rate of four and five-sixteenths percent.*

(b) On salaries, wages, commissions and other compensation earned by non-residents of Philadelphia for work done or services performed or rendered in Philadelphia after January 1, 1950 at the rate of one and one-quarter percent, after January 1, 1957 at the rate of one and one-half percent, after January 1, 1961 at the rate of one and five-eighths percent, after January 1, 1966 at the rate of two percent, after July 1, 1969 at the rate of three percent [and], after July 1, 1971 at the rate of three and five sixteenths percent *and after July 1, 1976 at the rate of four and five-sixteenths percent.*

(c) On the net profits earned in businesses, professions or other activities conducted by residents after January 1, 1949 at the rate of one and one-quarter percent, after January 1, 1956 at the rate of one and one-half percent, after January 1, 1960 at the rate of one and five-eighths percent,

after January 1, 1965 at the rate of two percent, after January 1, 1969 at the rate of three percent [and], after January 1, 1971 at the rate of three and five-sixteenths percent *and after January 1, 1976 at the rate of four and five-sixteenths percent.*

(d) On the net profits earned in businesses, professions or other activities conducted in Philadelphia by non-residents after January 1, 1949 at the rate of one and one-quarter percent, after January 1, 1956 at the rate of one and one-half percent, after January 1, 1960 at the rate of one and five-eighths percent, after January 1, 1965 at the rate of two percent, after January 1, 1969 at the rate of three percent [and] after January 1, 1971 at the rate of three and five-sixteenths percent *and after January 1, 1976 at the rate of four and five-sixteenths percent.*

Explanation:
[Brackets] indicate matter deleted.
Italics Indicate new matter added.

THE BUCK ACT

§108. Same; income tax

(a) No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reasons of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

(b) The provisions of subsection (a) shall be applicable only with respect to income or receipts received after December 31, 1940. July 30, 1947, c. 389, §1, 61 Stat. 641.